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43,709

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P&amp;G Case 7730R

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In the Application of :

T. E. RABE ET AL. :

Confirmation No.: Not Applicable

Serial No.: 09/629,734 :

Group Art Unit: 3751

Filed: July 31, 2000 :

Examiner: H. Le

For : ELECTROSTATICALLY-SPRAYABLE :

TOPICAL COMPOSITIONS HAVING INSULATING :

EXTERNAL PHASE AND CONDUCTIVE :

INTERNAL PHASE :

**RESPONSE TO RESTRICTION REQUIREMENT UNDER 37 CFR §121**

Commissioner for Patents

Washington, D.C. 20231

Dear Sir:

This is responsive to the Office Action mailed June 19, 2001, setting a three month period for response. In order that this response be deemed timely, submitted herewith is a petition to extend the period for response three months to December 19, 2001. Please consider the following remarks.

**Restriction Requirement**

The Examiner has required a restriction of Applicants' claimed invention under 35 USC §121. In setting forth the restriction, the Examiner has identified the following two separate and distinct inventions from which provisional election is required.

- I. Claims 1-21, drawn to a method, classified in class 514, subclass 1
- II. Claims 22-33, drawn to an apparatus and a method for using the apparatus, classified in class 401, subclass 190.

The Examiner contends that the inventions are distinct because Inventions I and II are related as process and apparatus for its practice. The Examiner restates MPEP §806/05(e) which states that the inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by

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another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. The Examiner asserts that in the instant application, Invention I shows a process of treating a user with a composition while Invention II shows an apparatus and a method for using the apparatus to apply the composition to a user. Applicants traverse this restriction requirement.

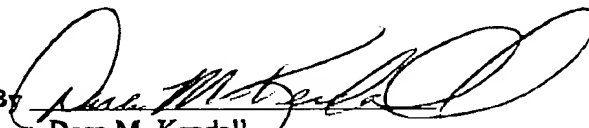
Applicants respectfully submit that the necessary one-way distinctness that is required to restrict the claims of "Invention I" and "Invention II" in the present application is not present. "Invention II" relates to an electrostatic sprayer for applying a cosmetic foundation to a face whereas "Invention I" relates to the methods of electrostatically spraying the skin. Such an apparatus that includes the claimed composition would only be suited for cosmetic purposes as claimed while the methods or processes that are claimed are not able to be practiced by hand or by another materially different process since the electrostatic spraying element is key to the present invention. Based on this rationale, Applicants assert that restriction in this instance is improper.

In view of the foregoing remarks, it is respectfully requested that the Examiner withdraw the requirement for restriction and allow Claims 1-33 to be prosecuted in the same application. In the event that the Examiner's restriction requirement is made final, Applicants hereby provisionally elect Claims 1-21 (Group I) for continued prosecution (holding Claims 22-33 (Group II) in abeyance under 37 CFR §1.142(b) until final disposition of the elected claims or until such time as they are canceled without prejudice for prosecution in a divisional application.

Respectfully submitted,

T. E. RABE ET AL.

By

  
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November 28, 2001  
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